

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 7 Case
)	Number <u>96-12714</u>
LYNDA FOX IVEY)	
a/k/a LYNDA F. HACKETT a/k/a)	
DEMPSEY HACKETT INSURANCE AGENCY)	FILED
)	at 3 O'clock & 25 min. P.M.
Debtor)	Date: 7-23-97
)	
MARK B. HERBERT)	
)	
Plaintiff)	
)	
vs.)	Adversary Proceeding
)	Number <u>97-01016A</u>
LYNDA FOX IVEY)	
a/k/a LYNDA F. HACKETT a/k/a)	
DEMPSEY HACKETT INSURANCE AGENCY)	
)	
Defendant)	

ORDER

By motion filed July 8, 1997 the plaintiff seeks an order pursuant to Federal Rule of Bankruptcy Procedure (FRBP) 7037 for sanctions against the defendant or in lieu thereof an order compelling discovery. Defense counsel disputes the validity of service of the discovery request by facsimile transmission (fax). The defendant's objection is overruled. According to the plaintiff's motion, on April 15, 1997 plaintiff's counsel served

defendant's counsel by fax with interrogatories and request for production of documents. The defendant did not respond to the discovery requests nor has the defendant filed a request for protective order pursuant to FRBP 7026(c). On June 3, 1997 plaintiff's attorney wrote to defendant's attorney requesting compliance with the discovery requests which letter was delivered by fax. On June 4, 1997 defendant's attorney responded by fax, a copy of which is attached to plaintiff's motion which correspondence stated

Please be advised that I will not be able to comply with your request for Production of Documents and Interrogatories at this time. In this connection, Mrs. Ivey [defendant] has been ill and had to cancel her appointment for today and has rescheduled for next week. Accordingly, as soon as I receive the information, I will send the same to you.

Clearly, defense counsel received the interrogatories and request for production of documents and did not timely object to the content of the request. FRBP 7033(b)(4); FRBP 7034(b). The objection now raised by defense counsel challenges the effectiveness of the service of the interrogatories by facsimile transmission. The service was clearly effective under FRBP 7005 which in relevant part provides

Rule 5. Service and Filing of Pleadings and Other Papers.

(a) Service: When Required. Except as otherwise provided in these rules, . . . every paper relating to discovery required to be

served upon a party unless the court otherwise orders, . . . shall be served upon each of the parties. . . .

(b) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney. . . . Service upon the attorney . . . shall be made by delivering a copy to the attorney . . . or by mailing it to the attorney . . . Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's . . . office . . . if there is no one in charge, leaving it in a conspicuous place therein. . . . (emphasis added)

Service by facsimile transmission satisfies the highlighted portion of Rule 5.

It is therefore ORDERED that the defendant shall fully respond to outstanding interrogatories and production of documents request within ten (10) days of the date of the entry of this order.

JOHN S. DALIS
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 23rd day of July, 1997.